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RURAL ELECTRIC CONVENIENCE
COOPERATIVE, CO. and SOYLAND
POWER COOPERATIVE, INC.,

Complainants,

vs.

AMERENCIPS

Respondent.

01-0675

**RESPONSE OF SOYLAND POWER COOPERATIVE, INC.
TO AMERENCIPS' MOTION TO STRIKE**

SOYLAND POWER COOPERATIVE, INC. (Soyland), Complainant, by and through its attorney, MICHAEL W. HASTINGS, herewith files its Response to the Motion to Strike filed by AmerenCIPS (CIPS) in the above docket, and in support thereof states as follows:

I. Soyland seeks Rehearing on the Commission's Final Order, Not the Commission's July 10, 2002 Order, as mischaracterized by CIPS.

In its Motion to Strike, CIPS mistakenly characterizes Soyland's Application for Rehearing as an appeal of the Illinois Commerce Commission's (Commission) July 10, 2002 Order. This is incorrect and intentionally misleading. Soyland filed its Application for Rehearing regarding the Commission's denial of Soyland's co-complainant status as that ruling is "finalized" in the Commission's September 4, 2003 Order. At page 47 of that Order, the Commission rules in part that "this Order is final as to all matters determined herein and it is subject to the Administrative Review Law."

The decision in docket 01-0675 is now final, and Soyland has a right pursuant to 83 ILAC Section 200.880 to seek rehearing on the Commission's denial of Soyland's co-

complainant status, as embodied in the Commission's September 4, 2003 Order. Therefore, CIPS argument is without merit.

II. **The Sangamon County Circuit Court's Order was only final as it related to the timeliness of Soyland's earlier Appeal.**

CIPS also misstates the meaning of the Sangamon County Circuit Court's Order relating to Soyland's Appeal of the Commission's denial of Soyland's Petition for Leave to Intervene. In that proceeding, the Commission, CIPS and Freeman United Coal Mining Company (Freeman) all argued that Soyland's appeal of the Commission's ruling denying Soyland's right to intervene was premature, as the Commission had not yet entered a final order in docket 01-0675. A copy of Freeman's Motion to Dismiss filed in the Sangamon County Circuit Court Case 2002-MR-482 is attached hereto as Exhibit A and incorporated herein by this reference. At page 2, paragraph 4, Freeman states that "The September 5, 2002 Order is not final and this complaint must be dismissed." A copy of CIPS' Motion to Dismiss filed in the Sangamon County Circuit Court Case 2002-MR-482 is also attached hereto as Exhibit B and incorporated herein by this reference. At page 4, paragraph 14, CIPS states: "The denial of Soyland's Petition for Reconsideration did not 'terminate the proceedings' before the Commission within the meaning of Sec. 3-101 of the Administrative Review Law. The decision that terminates the proceedings will be the Commission's ultimate decision on the merits of the contested complaint case be RECC against CIPS." A copy of the Commission's Motion to Dismiss filed in the Sangamon County Circuit Court Case 2002 MR 482, is attached hereto as Exhibit C and incorporated herein by this reference. The Commission's Motion at page 4, paragraph 8 states that "The proceedings in [Commission] Docket No. 01-0675 have not been terminated. The Commission has not made its final decision on which electric supplier, RECC or CIPS, has the right to serve the customer. Thus, there is no final Commission order which is reviewable. . ."

As stated above, Freeman, CIPS and the Commission all argued that Soyland's appeal was premature as no final order had been entered by the Commission. The Sangamon County Circuit Court Order, which is attached hereto as Exhibit D and incorporated herein by this reference, dismissed with prejudice **the timing** of Soyland's appeal, not the merits of Soyland's appeal. To the contrary, Soyland has never had a hearing on the merits at the Commission or at the Sangamon County Circuit Court.

Further, CIPS cannot have it both ways. It cannot argue as it did on Soyland's earlier appeal to the Sangamon County Circuit Court Case No. 2002-MR-482 that Soyland's appeal was untimely because no final order was entered at the Commission (procedural grounds), and now argue that Soyland cannot appeal the Commission's final order because the Sangamon County Circuit Court Order was final "on the merits" (substantive grounds).

III. Soyland is a party for purposes of Section 200.880.

CIPS makes the spurious argument that Soyland lacks party status because (a) Soyland "never achieved or perfected 'party' status in this contested complaint under the Electric Supplier Act and (b) that 200.880 authorizes only a 'party' to apply for rehearing." To the contrary, Soyland achieved party status the moment it filed as co-complainant with RECC in Commission Docket 01-0675. The fact that Soyland is an "electric supplier" as defined by the Electric Supplier Act, 220 ILCS 30/1 et seq., has never been challenged. It was only after CIPS and Freeman filed Motions to Dismiss did the Commission erroneously rule that Soyland could not proceed as a co-complainant. Even after two years of litigation, Soyland is still listed as a co-complainant in the caption of this case. Soyland has every right to have the Commission's erroneous rulings to be reviewed. Further, there is no "perfection" procedure for "party" status under the Commission rules. Finally, CIPS offers no statute, regulation or case to support its

argument that Soyland is not a party and therefore its motion to strike on this ground must be denied.

IV. CIPS position would deny Soyland its procedural due process rights pursuant to the United States Constitution.

At the heart of constitutional due process protections lies a person's guarantee of procedural due process as held by the United States Supreme Court in Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). (A fundamental requirement of due process is an opportunity to be heard at a meaningful time and in a meaningful manner. Mathews v. Eldridge, 96 S.Ct. at 903). In the case at bar, Soyland has never had a hearing on the merits of its rights to proceed as a co-complainant or as an intervenor. CIPS' efforts to thwart these basic rights should be denied and Soyland allowed to proceed pursuant to its Application for Rehearing. See also Cooper v. Department of Children and Family Services, 234 Il.App.3d 474, 599 N.E.2d 537, 174 Ill.Dec. 753 (Fourth Dist. Ct. of Appeals, 1992) where the Illinois Court of Appeals held that "due process before an administrative agency requires that a party have an opportunity to be heard." Cooper at 599 N.E. 2d at 545. See also Cooper, 599 N.E.2d at 545, where the court stated that "Due Process requires a definitive charge, adequate notice and a full, fair and impartial hearing."

WHEREFORE, Soyland respectfully requests that the Commission deny CIPS' Motion to Strike and for such other and further relief as the Commission deems just and equitable.

RESPECTFULLY submitted,

SOYLAND POWER COOPERATIVE, INC.

By: _____



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Dated this 20th day of October, 2003.

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Complainants,)	
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CERTIFICATE OF SERVICE

I, Michael W. Hastings, hereby certify that a copy of the Application for Rehearing in the above-captioned docket was served upon the party or parties listed on the attached service list, by first-class mail, postage prepaid, in accordance with the Rules of Practice of the Illinois Commerce Commission.

Date: October 20th, 2003



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